



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL- 9901-78-Region 3]**

**Delegation of Authority to the Commonwealth of Virginia to Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of delegation of authority.

**SUMMARY:** On March 13, 2013, EPA sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to Virginia through this notice.

**DATES:** On March 13, 2013, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce NESHAP and NSPS had been updated.

**ADDRESSES:** Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219. Copies of Virginia's notice to EPA that Virginia

has updated its incorporation by reference of Federal NESHAP and NSPS, and of EPA's response, may also be found posted on EPA Region III's web site at:  
<http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm>.

**FOR FURTHER INFORMATION CONTACT:** Ray Chalmers, (215) 814-2061, or by e-mail at [chalmers.ray@epa.gov](mailto:chalmers.ray@epa.gov).

**SUPPLEMENTARY INFORMATION:** On February 14, 2013, Virginia notified EPA that Virginia has updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2012. On March 13, 2013, EPA sent Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAP and NSPS as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAP and NSPS must be submitted to both the US EPA Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

“Michael G. Dowd, Director  
Air Division  
Virginia Department of  
Environmental Quality  
629 East Main Street  
P.O. Box 1105  
Richmond, Virginia 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 CFR Parts 60, 61 and 63.<sup>1</sup> In those actions, EPA also delegated to Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated February 14, 2013, Virginia informed EPA that Virginia had updated its incorporation by reference of federal NESHAP and NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2012. Virginia noted that its intent in updating its incorporation by reference of the NESHAP and NSPS was to retain the authority to enforce all standards included in the revisions, as per the provisions of EPA's previous delegation actions. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority. Virginia made only allowed wording changes.

Virginia provided copies of its revised regulations specifying the NESHAP and NSPS which Virginia has adopted by reference. These revised regulations are entitled 9 VAC 5-50 "New and Modified Stationary Sources," and 9 VAC 5-60 "Hazardous Air Pollutant Sources." These revised regulations have an effective date of February 13, 2013.

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<sup>1</sup> EPA has posted copies of these actions at: <http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm>.

Accordingly, EPA acknowledges that Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which Virginia has adopted by reference in Virginia's revised regulations 9 VAC 5-50 and 9 VAC 5-60, both effective on February 13, 2013.

Please note that on December 19, 2008, in *Sierra Club v. EPA*,<sup>2</sup> the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Virginia incorporated 40 CFR Part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club vs. EPA*.

EPA appreciates Virginia's continuing NESHAP and NSPS enforcement efforts, and also Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

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<sup>2</sup> *Sierra Club v. EPA*, 551 F.3<sup>rd</sup> 1019 (D.C. Cir. 2008).

Sincerely,

Diana Esher, Director  
Air Protection Division”

This notice acknowledges the update of Virginia’s delegation of authority to implement and enforce NESHAP and NSPS.

Dated: September 18, 2013.

Diana Esher, Director,  
Air Protection Division,  
Region III.

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